

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

LIMELIGHT NETWORKS, INC.,

Plaintiff and Counterclaim
Defendant,

v.

XO COMMUNICATIONS, LLC.,

Defendant,

AKAMAI TECHNOLOGIES, INC.,

Defendant and Counterclaim
Plaintiff,

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Counterclaim Plaintiff.

Case No. 3:15cv720-JAG

JURY TRIAL DEMANDED

LIMELIGHT NETWORKS, INC.'S NOTICE OF SUPPLEMENTAL AUTHORITY

Limelight respectfully brings to the Court's attention an opinion recently issued by the U.S. Court of Appeals for the Federal Circuit regarding lost profits. In *Mentor Graphics Corp. v. EVE-USA, Inc.*, the Federal Circuit rejected the argument (also made by Akamai as the basis for seeking to strike Dr. Prowse's lost profits opinions in its *Daubert* motion) that lost profits must be apportioned after application of the *Panduit* factors:

We hold that ***the district court did not err in refusing to further apportion lost profits*** after the jury returned its verdict applying the *Panduit* factors. We conclude that, ***when the Panduit factors are met, they incorporate into their very analysis the value properly attributed to the patented feature.***

___ F. 3d ___, Nos. 2015-1470, 2015-1554, 2015-1556, 2017 U.S. App. LEXIS 4595, at *27 (Fed. Cir. March 16, 2017) (emphasis added).

Accordingly, Limelight respectfully submits this recent decision (attached as **Exhibit A**) as a supplemental authority in support of Limelight's opposition to Akamai's *Daubert* motion regarding Dr. Prowse's lost profits opinions. *See* D.E. 381 (12/20/2016 Tr.) at 56:20-57:6; D.E. 276 (Limelight's Opp.) at 22-29; D.E. 398 at 23-26; D.E. 408 at 11-13.¹

¹ This Court's March 13, 2017 Order regarding Akamai's *Daubert* motion notes that "[a]n appropriate Opinion will follow." D.E. 420. Limelight submits this notice of supplemental authority so that it can be considered by the Court as the Court finalizes that opinion. Limelight also respectfully maintains its disagreement with this Court's order regarding Akamai's *Daubert* motion and Limelight reserves all rights to appeal that decision at the appropriate time or seek additional recourse once the Court issues its opinion.

Date: April 4, 2017

Respectfully submitted,

/s/ Natasha M. Saputo

Maya M. Eckstein (Va. Bar No. 41413)
HUNTON & WILLIAMS LLP
951 Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8788
Facsimile: (804) 343-4630
Meckstein@hunton.com

Matthew D. Powers (CA Bar No. 104795) (*pro hac vice*)
Paul T. Ehrlich (CA Bar No. 228543) (*pro hac vice*)
Azra Hadzimehmedovic (CA Bar No. 239088) (*pro hac vice*)
William P. Nelson (CA Bar No. 196091) (*pro hac vice*)
Aaron M. Nathan (CA Bar. No. 251316) (*pro hac vice*)
Robert L. Gerrity (CA Bar No. 268084) (*pro hac vice*)
Natasha M. Saputo (VA Bar No. 80893)
Lital Leichtag-Fuks (CA Bar No. 295080) (*pro hac vice*)
Yi Chen (CA Bar No. 295236) (*pro hac vice*)
Sergio Davila (CA Bar No. 302689) (*pro hac vice*)
TENSEGRITY LAW GROUP, LLP
555 Twin Dolphin Drive, Suite 650
Redwood Shores, CA 94065
Telephone: (650) 802-6000
Facsimile: (650) 802-6001
matthew.powers@tensegritylawgroup.com
paul.ehrlich@tensegritylawgroup.com
azra@tensegritylawgroup.com
william.nelson@tensegritylawgroup.com
aaron.nathan@tensegritylawgroup.com
robert.gerrity@tensegritylawgroup.com
natasha.saputo@tensegritylawgroup.com
lital@tensegritylawgroup.com
yi.chen@tensegritylawgroup.com
sergio.davila@tensegritylawgroup.com

*Attorneys for Plaintiff and Counterclaim
Defendant Limelight Networks, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2017, a true copy of the foregoing will be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF).

/s/ Natasha M. Saputo
Natasha M. Saputo